

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

METROPOLITAN GROUP PROPERTY
AND CASUALTY INSURANCE
COMPANY, now known as FARMERS
GROUP PROPERTY AND CASUALTY
INSURANCE COMPANY,

Plaintiff,

v.

AUSTIN FITE,

Defendant.

AUSTIN FITE,

Consolidated Plaintiff,

v.

METROPOLITAN GROUP PROPERTY
AND CASUALTY INSURANCE
COMPANY, now known as FARMERS
PROPERTY AND CASUALTY
INSURANCE COMPANY and
METROPOLITAN PROPERTY AND
CASUALTY INSURANCE COMPANY,
now known as FARMERS PROPERTY AND
CASUALTY INSURANCE COMPANY,
registered foreign insurers doing business in
the State of Washington; and “JOHN AND
JANE DOES” 1-10,

Consolidated Defendants.

CASE NO. 3:20-cv-05697-JHC

ORDER RE: MOTION FOR SUMMARY
JUDGMENT (DKT. # 110)

I**INTRODUCTION**

This insurance matter comes before the Court on Plaintiff and Consolidated Defendant Metropolitan Group Property and Casualty Insurance Company's second motion for summary judgment. *See* Dkt. # 110. Defendant and Consolidated Plaintiff Austin Fite (Austin) claims to be an insured under an automobile insurance policy issued to his father Brian Fite and stepmother Tina Fite (Brian and Tina) by Metropolitan.¹ *See* Dkt. # 114 at 2. According to Austin, Metropolitan has failed to "promptly and reasonably [pay] the benefits available to [him] under the terms of his parents' automobile insurance policy[.]" *Id.* Metropolitan seeks summary judgment, requesting that the Court: (1) declare that it does not owe any uninsured motorist (UIM) coverage to Austin; (2) dismiss the contractual and extracontractual claims by Austin against Metropolitan; (3) and limit Austin's personal injury protection (PIP) recovery, if any, under its policy. Dkt. # 110 at 2–3. For the following reasons, the Court GRANTS in part and DENIES in part the motion.

II**BACKGROUND**

On July 9, 2014, Austin, at the age of 18, was struck by a vehicle driven by Lee Mudd. *See* Dkt. # 41 at 4; *Fite v. Mudd*, 19 Wash. App. 2d 917, 921, 498 P.3d 538 (2021). Austin was hospitalized for serious injuries, which included a femur fracture, fractured bones in his face and head, traumatic brain injury, and detached retinas. Dkt. # 41 at 4. In January 2015, Brian and Tina notified Metropolitan of the collision and the insurer opened an investigation. Dkt. # 38-8 at 2; *see* Dkt. # 38-10. On February 5, 2015, Metropolitan preliminarily concluded that it was

¹ Metropolitan Group Property & Casualty Company Policy Number 642-35-3772-0. *See* Dkt. # 38-7.

1 unlikely that its policy covered Austin because he was not named in the policy declarations and
2 did not reside in the named insureds' household at the time of the accident; Metropolitan sought
3 to take examinations under oath of Brian, Tina, and Austin on February 24, 2015. *See* Dkt. # 38-
4 10 at 4–5. Counsel for Brian, Tina, and Austin declined the examination request, stating that
5 Brian and Tina were unavailable on the proposed date and Austin was undergoing treatment for
6 his collision-related injuries; counsel also shared that Austin would not likely be able participate
7 in any future examinations due to his traumatic brain injury. Dkt. # 38-11 at 2–3. Between 2014
8 and 2015, Austin underwent multiple eye surgeries. Dkt. # 41 at 4.

9 In 2017, Austin filed a negligence suit against Mudd and the City of Puyallup; the jury
10 awarded Austin \$6.5 million, but the Washington Court of Appeals reversed the liability
11 determination. *See Fite*, 19 Wash. App. 2d at 921–22; Dkt. # 39-7 at 2. While the state court
12 appeal was pending, Metropolitan filed this declaratory judgment action and Austin later sued
13 Metropolitan, claiming that the insurer had engaged in bad faith and harmed Austin when it
14 failed to provide timely coverage. *See* Dkt. # 113; *see Fite v. Metro. Grp. Prop. and Cas. Ins., et*
15 *al.*, Case No. 3:20-cv-05819-BHS (consolidated with this case on November 10, 2021, at Dkt. #
16 15). Austin brings six causes of action: (1) negligence; (2) breach of contract; (3) violation of
17 the Washington Insurance Fair Conduct Act (IFCA); (4) violation of the Washington Consumer
18 Protection Act (CPA); (5) breach of the duty of good faith; and (6) breach of fiduciary duties.
19 *See* Case No. 3:20-cv-05819-BHS, Dkt. # 9-6 at 12–19 (amended complaint).

20 On June 2, 2022, Metropolitan moved for summary judgment for the first time, claiming
21 that: (1) it did not owe UIM or PIP coverage to Austin because he was not an insured when he
22 was injured; and (2) Austin's extracontractual claims should be dismissed because he was not
23 entitled to coverage and the investigation and denial of his claim were reasonable. *See generally*
24 Dkt. # 37. The Court denied the motion, determining that: (1) there was a question of fact as to

whether Austin was a resident of the Brian and Tina’s household at the time of the accident and therefore qualified as an insured; and (2) summary judgment was inappropriate for Austin’s extra-contractual claims because of the fact question of the reasonableness of Metropolitan’s actions in investigating and ultimately denying coverage. Dkt. # 56 at 5. On December 21, 2022, the Court stayed this case pending resolution of the state court personal injury action. *See* Dkt. # 102.

The state court case was tried again to resolve the issue of liability remanded on appeal, and on August 29, 2023, the jury found that Mudd and the City of Puyallup were jointly and severally liable for damages of about \$6.5 million, with a total judgment amount of \$7,929,294.51, which included accrued post-judgment and post-verdict interest. *See* Dkt. # 105 at 4–6, 8–11. The City of Puyallup fully satisfied the judgment. *Id.* at 13–14. On December 27, 2023, the Court lifted the stay. Dkt. # 108. Metropolitan filed its second motion for summary judgment. Dkt. # 110. Austin then filed his opposition to the motion.²

III

DISCUSSION

A. Summary Judgment Standards

Summary judgment is appropriate if the evidence viewed in the light most favorable to the non-moving party shows “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is “material” if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “‘genuine’ only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party.” *Far*

² In his briefing, Austin clarifies that he does not oppose dismissal of claims related to Consolidated Defendant Metropolitan Property and Casualty Insurance Company’s excess (umbrella) coverage. Dkt. # 114 at 17.

1 *Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001) (citing *Anderson*, 477 U.S. at 248–
2 49).

3 The moving party bears the initial burden of showing there is no genuine dispute of
4 material fact and that it is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the
5 moving party does not bear the ultimate burden of persuasion at trial, it can show the lack of
6 such a dispute in two ways: (1) by producing evidence negating an essential element of the
7 nonmoving party’s case, or (2) by showing that the nonmoving party lacks evidence of an
8 essential element of its claim or defense. *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d
9 1099, 1106 (9th Cir. 2000). If the moving party meets its burden of production, the burden then
10 shifts to the nonmoving party to identify specific facts from which a factfinder could reasonably
11 find in the nonmoving party’s favor. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 250.

12 When there are no material facts in dispute, the interpretation of insurance policy is a
13 matter of law and appropriately decided on summary judgment. *See Allstate Ins. Co. v. Peasley*,
14 131 Wash. 2d 420, 423–24, 932 P. 2d 1244 (1997); *see, e.g., Am. Bankers Ins. v. N.W. Nat. Ins.*,
15 198 F.3d 1332 (11th Cir.1999).

16 B. Washington Law on Insurance Policy Interpretation

17 In cases based on diversity jurisdiction, such as this one, Washington law governs. *See*
18 *Ins. Co. of N. Am. v. Fed. Exp. Corp.*, 189 F.3d 914 (9th Cir. 1999); *Anderson v. State Farm Mut.*
19 *Auto. Ins. Co.*, No. C06-1112RSM, 2007 WL 1577870 (W.D. Wash. May 30, 2007).

20 “The insurance contract must be viewed in its entirety; a phrase cannot be interpreted in
21 isolation.” *Peasley*, 131 Wash. 2d at 423–24. “Insurance contracts should be interpreted as an
22 average insurance purchaser would understand them[.]” *Diamaco, Inc. v. Aetna Cas. & Sur. Co.*,
23 97 Wash. App. 335, 338, 983 P. 2d 707 (1999), *as amended* (Oct. 12, 1999) (quoting *Daley v.*
24 *Allstate Ins. Co.*, 135 Wash. 2d 777, 784, 958 P. 2d 990 (1998)). Courts must apply “a practical

and reasonable rather than a literal interpretation[.]” without applying a “strained or forced construction which would lead to an extension or restriction of the policy beyond what is fairly within its terms, or which would lead to an absurd conclusion, or render the policy nonsensical or ineffective.” *Morgan v. Prudential Ins. Co. of Am.*, 86 Wash. 2d 432, 434–35, 545 P. 2d 1193 (1976). “If the policy language on its face is fairly susceptible to two different and reasonable interpretations, then ambiguity exists, and the court must apply the interpretation most favorable to the insured.” *United Specialty Ins. Co. v. Shot Shakers, Inc.*, No. C18-0596JLR, 2019 WL 199645, at * 8 (W.D. Wash. Jan. 15, 2019) (citing *Peasley*, 131 Wash. 2d at 422–26).

C. The UIM Insurance Provision

The Metropolitan policy states in pertinent part:

DUPLICATE PAYMENTS

No one may receive duplicate payment for the same element of loss under this coverage and:

1. all sums paid by or on behalf of any liable parties.
2. all sums paid or payable under the **AUTOMOBILE LIABILITY** section of this policy.

Dkt. # 38-7 at 49.

D. Metropolitan’s Motion for Summary Judgment

1. UIM Coverage

Metropolitan contends that because the City of Puyallup and Mudd have satisfied the \$7,929,294.51 judgment, including interest and costs, *see* Dkt. # 105 at 8–13, the insurer does not owe Austin any UIM benefits because that would result in a “double recovery.” Dkt. # 110

1 at 9.³ Metropolitan says that *Krantz v. Allstate Property & Casualty Insurance Company* should
 2 instruct the Court's analysis. No. C12-5848 RBL, 2014 WL 2558679 (W.D. Wash. June 6,
 3 2014), *aff'd in part, vacated in part on other grounds sub nom. Krantz on behalf of K.K. v.*
 4 *Allstate Prop. & Cas. Ins. Co.*, 683 Fed. App'x. 586 (9th Cir. 2017).

5 *Krantz* arose out of a car collision that injured plaintiff K.K and others. The accident was
 6 caused by an underage, intoxicated driver, Adam Pena, and Dean Wenner, the person who
 7 provided alcohol to Pena. *Krantz*, 2014 WL 2558679, at *1. After K.K. and the other injured
 8 parties filed suit against Pena and Wenner, a global settlement was reached between the
 9 plaintiffs, the two tortfeasors, and the insurers. *Id.* The settlement exhausted the combined
 10 limits of Pena's and Wenner's liability policies, and K.K. received \$65,000 from the combined
 11 fund, with Wenner's insurer issuing the actual check. *Id.* K.K.'s insurer, Allstate, also paid him
 12 an additional \$10,000 for medical coverage under his PIP coverage. *Id.* K.K. then sued Allstate,
 13 claiming that he had not been fully compensated under his UIM benefits. *Id.* A jury later
 14 determined that K.K. had suffered \$81,708.32 in damages. *Id.* Allstate asked the *Krantz* court to
 15 set-off the total damage amount of \$65,000 that Krantz had already received from the \$81,708.32
 16 judgment. The district court agreed, saying that Krantz was seeking double recovery and that
 17 Allstate was "entitled to deduct the amount of the settlement [] from the jury's total damage
 18 award under its policy and under the UIM statute." *Id.* at *2.

19 The Ninth Circuit affirmed, concluding that "Washington courts have frequently held that
 20 UIM insurance should not permit insured parties to recover more than their total damages . . .
 21 and the interpretation that Krantz advances would allow K.K. to do so." *Krantz on behalf of*

23 ³ Metropolitan does not concede that Austin is an insured under the policy, but states that even
 24 assuming that Austin is an insured, he is still not eligible for UIM benefits because he "does not have any
 uncompensated damages." See Dkt. # 110 at 9.

1 K.K., 683 F. App'x at 588 (citing *Elovich v. Nationwide Ins. Co.*, 104 Wash. 2d 543, 550, 707
2 P.2d 1319 (1985)).

3 Metropolitan contends that the *Krantz* outcome adheres to Washington UIM law and
4 should be applied here, particularly when considering the similarities between the Allstate UIM
5 policy language and its own policy language. Dkt. # 110 at 11 (comparing the Allstate language,
6 “[T]he total damages an insured person is legally entitled to recover will be reduced by . . . **all**
7 **amounts paid by the owner of an underinsured motor vehicle or any else responsible**” with
8 Metropolitan’s language “No one may receive duplicate payment for the same element of loss
9 under this coverage and . . . **all sums paid by or on behalf of any liable parties.**”) (emphasis in
10 briefing); see Dkt. # 38-7 at 47. Metropolitan concludes that because Austin has already been
11 fully compensated for his jury awarded damages by the City of Puyallup and Mudd, as in *Krantz*,
12 he may not recover an additional \$500,000. Dkt. # 110 at 12.

13 Austin responds that the “Duplicate Payments” section of Metropolitan’s policy is
14 ambiguous, stating that its language, “all sums paid by or on behalf of any liable parties[,]” is
15 “clearly ambiguous and should be limited only to other payments made vis-à-vis insurance and
16 not other kinds of compensation[,]” because of the “Duplicate Payments” section’s proximity to
17 the policy’s subsequent “Other Insurance” section. Dkt. # 114 at 9 (citing *Kaiser Found. Health*
18 *Plan, Inc. v. Maylone*, 23 Wash. App. 2d 1017, 2022 WL 3754902 (2022) (health insurer Kaiser
19 had a right to reimbursement from insured’s UIM proceeds)).⁴ Austin claims that therefore “it
20 would be unreasonable and violative of the UIM statute [and public policy] to construe the
21 ‘duplicate payment’ clause to include non-insurance recoveries inclusive of the essentially \$4
22 million cash paid by the City of Puyallup.” Dkt. # 114 at 9–10. Austin suggests that he is not
23

24 ⁴ This is an unpublished and inapposite case, which the Court declines to address.

1 seeking double recovery because “the City of Puyallup was self-insured up to \$4 million in this
2 case[,]” making the first four million paid to Austin “essentially a cash payment” and not a
3 payment from “other insurance.” *Id.* at 9.

4 The Court disagrees with Austin for two reasons. First, courts interpreting an insurance
5 policy give the language its plain meaning, construing the policy as would an “average” person
6 purchasing insurance. *Woo v. Fireman’s Fund Ins. Co.*, 161 Wash. 2d 43, 52, 164 P.3d 454
7 (2007). A clause in an insurance policy is ambiguous if it is “fairly susceptible to two different
8 interpretations, both of which are reasonable.” *Quadrant Corp. v. Am. States Ins. Co.*, 154
9 Wash. 2d 165, 171, 110 P.3d 733 (2005). The plain language of the policy at issue is not
10 ambiguous and Austin’s interpretation of the “Duplicate Payments” section strays from the clear
11 terms of the policy and into the impermissible territory of “absurd” conclusions that could render
12 the policy “nonsensical.” *See Morgan*, 86 Wash. 2d at 434–35. The section’s terms are not
13 fairly susceptible to Austin’s proposed interpretation; the Court will not interpret the term “all
14 sums” to mean “all insurance proceeds.” The Court therefore declines to adopt Austin’s
15 position, concluding that an average person purchasing insurance would construe the terms of the
16 “Duplicate Payments” section (“all sums paid by or on behalf of any liable parties”) to include
17 any payments, including those made by tortfeasors—paid in cash or otherwise—to satisfy a
18 judgment.

19 Second, Austin’s arguments on the public policy implications of the “Duplicate
20 Payments” section are unavailing. While the Court agrees that the UIM statute protects victims
21 of automobile collisions from underinsured or uninsured drivers, *see* Dkt. # 114 at 7, Austin is
22 now not one of those individuals because he has collected all the damages awarded to him.
23 Austin fails to point to any pertinent public policy, statute, or other legal authority that would be
24 violated if the Court enforces the insurance provision as written.

1 Citing no legal authority, Austin also contends that he “did not fully recover all amounts
2 due and owing from underinsured motorist Lee Mudd because the City of Puyallup was only
3 required to pay at a lower rate of interest as evidenced by the judgment in this case.” Dkt. # 114
4 at 10; *see* Dkt. # 111-1 at 2–3 (post-judgment interest for Mudd was 7% and post-judgment
5 interest for the City of Puyallup was 3.733%). Austin says that, had the city’s interest accrued at
6 the same rate as Mudd’s, “it would have resulted in at least double the \$317,868.20” assigned to
7 the city. Dkt. # 114 at 10. Austin asserts that the statutorily mandated interest rates assigned to
8 the tortfeasors rendered the interest portion of the judgment to be “several only” despite the
9 jury’s joint and several liability determination. *See* RCW 4.56.110(3)(a), (b).

10 Although Austin appears to oppose the way post-judgment interest rates are applied to
11 public agencies (the city) versus underinsured motorists (Mudd), he does not bring either an as
12 applied or facial challenge to the RCW 4.56.110 or provide any legal authority to support his
13 position. Dkt. # 114 at 10 (absence); *see* RCW 4.56.110(3)(a), (b). Whether Austin *would have*
14 received more in post-judgment interest had Mudd paid a higher portion of the judgment is
15 ultimately irrelevant to the Court’s determination, and the Court is unaware of any legal
16 authority to support his theory.

17 Lastly, Austin says that, if the Court does not invalidate the “Duplicate Payments”
18 section, “Metropolitan’s contract of insurance does not permit it to do what it did here and
19 unreasonably deny payment to Mr. Fite for 9 years, only to take advantage of which ultimately
20 was able to recover from other parties.” Dkt. # 114 at 11. Austin contends that, in alignment
21 with the UIM statute’s public policy, “Metropolitan should have timely paid Mr. Fite his UIM
22 and PIP benefits and thereafter sought recovery/repayment from the 2023 judgment proceeds, if
23 applicable.” *Id.* Austin concludes that Metropolitan’s “failure to promptly pay denied Austin his
24 use of \$500,000 for a period in excess of 9 years.” *Id.* at 12–13. Austin provides no legal

1 authority to support his assertion. And while such an argument may be pertinent to Austin's
 2 other claims against Metropolitan, it is inapt in the context of seeking UIM benefits.

3 The Court therefore determines that, for these reasons, the reasons outlined in *Krantz*, and
 4 because Austin has been fully compensated for his injuries from the accident, he may not recover
 5 UIM benefits on top of his recovery on the judgment. *See* 2014 WL 2558679, at *1; *Krantz on*
 6 *behalf of K.K.*, 683 F. App'x at 588 (citing *Elovich*, 104 Wash. 2d at 550); *Luckett v. State Farm*
 7 *Mut. Auto. Ins. Co.*, 848 F. App'x 262, 263 (9th Cir. 2021) ("The district court correctly
 8 determined that Luckett was not entitled to UIM benefits under his policy because he had already
 9 received all that he was 'legally entitled to recover' through settlement. *See* Wash. Rev. Code §
 10 48.22.030(1). The purpose of UIM coverage is to 'place the insured in the same position as if
 11 the tortfeasor carried [adequate] liability insurance.'"); *Petersen-Gonzales v. Garcia*, 120 Wash.
 12 App. 624, 634, 86 P.3d 210, 215 (2004) ("UIM insurance provides an excess layer of coverage
 13 that is designed to provide full compensation for all amounts *that a claimant is legally entitled to*
 14 *where the tortfeasor is underinsured.*") (emphasis in original) (citation omitted).

15 2. Austin's Extracontractual Claims

16 Metropolitan seeks the dismissal of Austin's extracontractual claims. Dkt. # 110 at 13–
 17 14. Austin brings five extracontractual causes of action that sound in tort: (1) negligence; (2)
 18 breach of the duty of good faith; (3) breach of fiduciary or quasi-fiduciary duty; (4) violation of
 19 the CPA; and (5) violation of IFCA. *See* Case No. 3:20-cv-05819-BHS, Dkt. # 9-6 at 12–19.
 20 Metropolitan offers three arguments why the Court should dismiss. Dkt. # 110 at 13–19.⁵

21
 22
 23 ⁵ Metropolitan also seeks dismissal of Austin's *contractual* claim, *see* Dkt. # 110 at 2–3, but does
 24 not provide any argument to support its request. The Court therefore declines to address the issue. *See*
 Case No. 3:20-cv-05819-BHS, Dkt. # 9-6 at 12; *cf. Christian Legal Soc. Chapter of Univ. of California v.*
Wu, 626 F.3d 483, 487 (9th Cir. 2010) (Courts regularly "refuse[] to address claims that were only
 'argue[d] in passing'" or that were "bare assertion[s] with no supporting argument") (citations omitted).

1 Metropolitan's first two arguments for dismissal are that Austin does not provide
2 sufficient facts to establish the elements of substantive and procedural liability in its bad-faith
3 claim. Metropolitan first says that Austin has not established a substantive bad-faith claim. *Id.*
4 at 14–15. The insurer says it has

5 no obligation to pay UIM benefits because Austin cannot meet his burden to show
6 that he has not been fully compensated by tortfeasors' payments. Since there is no
7 obligation, Metropolitan's declination to pay is legally correct, and since it is
8 legally correct, as a matter of law it cannot be unreasonable.

9 *Id.* at 15 (citing *United Services Auto. Ass'n v. Speed*, 179 Wash. App. 184, 202–203, 317 P.3d
10 532 (2014); *Wright v. Safeco Ins. Co. of Am.*, 124 Wash. App. 263, 279–80, 109 P.3d 1 (2004)).

11 Metropolitan next says that Austin may not recover any extracontractual liability
12 damages on the basis of procedural bad faith because he has not identified any *Coventry*
13 *Associates* damages. *See Coventry Assocs. v. Am. States Ins. Co.*, 136 Wash. 2d 269, 961 P.2d
14 933 (1998). Metropolitan says that “[t]o date, Austin has not identified any ‘procedural’ bad
15 faith, negligence[,] or CPA damages, and so this extracontractual claim—if it is even asserted
16 here—must also be dismissed.” Dkt. # 110 at 17 (citing *Celotex*, 477 U.S. at 323).

17 Austin responds that there is “simply no question that [he] has grievously suffered due to
18 Metropolitan's” failure to pay insurance benefits. Dkt. # 114 at 14. Austin states that “at a
19 minimum” there is a question of fact as to his entitlement to these benefits and a question as to
20 whether Metropolitan's failure to provide these benefits “was unreasonable and violative of
21 applicable regulatory claims handling standards.” *Id.* Austin provides a supplemental
22 declaration that he has suffered certain harm because of Metropolitan's failure to provide
23 insurance benefits. Dkt. # 112; *see* Dkt. # 41.

24 Austin also states that there is a question of fact as to whether Metropolitan's “failure was
unreasonable and violative of applicable of applicable regulatory claims handling standard.”

Dkt. # 114 at 14. Austin provides a supplemental declaration from Gary Williams, an insurance claims expert, to support Austin's claim that he is entitled to damages because of Metropolitan's alleged unreasonable behavior. Dkt. # 113; *see* Dkt. # 40.⁶

Metropolitan's third argument relates to whether it owes Austin extracontractual damages under its PIP coverage, Metropolitan asserts that any recovery under this provision is precluded because

Austin has not disclosed any contractual or extracontractual damages from not having the \$10,000 in PIP. Indeed, it is hard to imagine that he would have suffered any harm at all from not having PIP, since his medical bills were covered by the Fites' medical insurance. . . . Under *Celotex*, this portion of his case must be dismissed because Austin's complete failure of proof on damages is fatal to his claims. . . . In addition, the court should declare that the most Austin can recover on account of the PIP claim (if coverage exists) is an award of fees and costs pursuant to Washington law.

Dkt. # 110 at 18.

Austin responds that Metropolitan concedes that, at minimum, he "would have been entitled to payment of costs and attorney's fees for his counsel's effort" under the applicable PIP efforts. Dkt. # 114 at 16. Austin says that had Metropolitan provided him with PIP benefits, those funds "would have provided him with the benefit of insurance coverage and ameliorated his rather dire economic conditions during the long pendency of the underlying third-party lawsuit." *Id.*

a. Substantive extracontractual liability

As for its position on the issue of substantive extracontractual liability, Metropolitan suggests that because it denied coverage to Austin for about nine years—based on the dispute

⁶ In its reply, Metropolitan contends that the Court should not consider the Williams declaration, moving to strike it from the record because it is based on impermissible conclusions of law. *See* Dkt. # 113; Dkt. # 115 at 9–11. Because the Court does not rely on the substance of this declaration, it declines to address this issue.

over whether Austin was a resident of the Fite household and an insured—and he has now been fully compensated by the two tortfeasors in a third-party liability lawsuit, Metropolitan’s denial of payment was legally correct and therefore cannot be substantively unreasonable. Dkt. # 110 at 14–15 (“An insurer’s coverage decision is not actionable if it is merely incorrect; it must be *unreasonably* incorrect in order to be in bad faith, or violate the CPA or IFCA.”) (emphasis in original). The Court notes, however, that whether Metropolitan was reasonable in handling Austin’s claim, either in its investigation or in declining to pay benefits, has not been decided; the Court previously stated that this is a question of fact whether Austin is an insured under the policy. *See* Dkt. # 56 at 3–4. Were courts to adopt Metropolitan’s proffered theory, they would create perverse incentives for insurance companies to drag their feet on claims investigations and delay long enough for a third-party payment to relieve insurers of their duty to pay corresponding insurance benefits. The Court thus declines to follow Metropolitan’s reasoning.⁷

b. *Coventry* Damages: Breach of duty of good faith, negligence, and IFCA claims

Metropolitan seeks dismissal of the claims for breach of duty of good faith, negligence, and IFCA violation, challenging Austin’s showing of damages.

“An action for bad faith handling of an insurance claim sounds in tort.” *Safeco Ins. Co. of Am. v. Butler*, 118 Wash. 2d 383, 389, 823 P.2d 499 (1992). Claims of an insurer’s bad faith are analyzed by applying the same principles as any other tort: duty, breach of that duty, and damages proximately caused by that breach. *See Mut. of Enumclaw Ins. Co. v. Dan Paulson*

⁷ The Court also notes that the cases cited by Metropolitan do not appear to apply to the facts here or the arguments presented in the briefing. Dkt. # 110 at 15; *see, e.g., Kirk v. Mt. Airy Ins. Co.*, 134 Wash. 2d 558, 563–64, 951 P.2d 1124 (1998) (discussing a rebuttable presumption of harm for an insurer’s bad-faith breach of contract and the remedy of coverage by estoppel); *Speed*, 179 Wash. App. 184 at 202–03 (holding that when an insurer correctly denies a duty to defend, there can be no bad-faith claim based on that denial).

1 *Constr., Inc.*, 161 Wash. 2d 903, 916, 169 P.3d 1 (2007) (quoting *Smith v. Safeco Ins. Co.*, 150
 2 Wash. 2d 478, 485, 78 P.3d 1274 (2003)). Emotional distress damages are recoverable under a
 3 claim of bad faith. *Singh v. Zurich Am. Ins. Co.*, 5 Wash. App. 2d 739, 760, 428 P.3d 1237
 4 (2018) (affirming the award of emotional distress damages and discussing the various cases that
 5 confirm that such damages are cognizable in insurance bad-faith claims).⁸

6 Metropolitan contends that under *Coventry Associates* only consequential economic
 7 damages are available under a bad-faith claim. 136 Wash. 2d 269. There, the Supreme Court of
 8 Washington determined that—when considering procedural extracontractual claims of bad faith
 9 and CPA violations—“an insurer is not liable for the policy benefits but, instead, liable for the
 10 consequential damages to the insured as a result of the insurer’s breach of its contractual and
 11 statutory obligations.” *Coventry Assocs.*, 136 Wash. 2d at 284. Because the record
 12 demonstrated that the insured “was required to go through some financial expense as a result of
 13 the bad faith investigation conducted by American States” and these “expenses include the cost
 14 of hiring their own experts and investigators to determine if [the insurer] should have covered the
 15 claim[,]” the insured was “entitled to make a claim for those amounts and damages normally
 16

17 ⁸ Austin also brings breach of good-faith duty and breach of quasi-fiduciary duty claims. Case
 18 No. 3:20-cv-05819-BHS, Dkt. # 9-6 at 13. Claims against insurers for both breach of fiduciary duty and
 19 breach of duty of good faith are duplicative. Under Washington law, insurers do not owe a true fiduciary
 20 duty to their insureds, but instead have a “quasi-fiduciary” relationship with them. *E.g.*, *Sadler v. State*
 21 *Farm Mut. Auto. Ins. Co.*, No. C07-995Z, 2008 WL 4371661, at *12 (W.D. Wash. Sept. 22, 2008), *aff’d*,
 22 351 F. App’x 234 (9th Cir. 2009) (“In response to State Farm’s motion for summary judgment, plaintiffs
 23 have provided no analysis concerning how their breach of fiduciary duty claim differs from their bad faith
 24 claim, and the Court therefore treats the two causes of action as redundant, with both proceeding under
 the theory that State Farm did not deal fairly with plaintiffs and/or give equal consideration to plaintiffs’
 interests. Pursuant to that rationale, plaintiffs’ claim fails as a matter of law.”); *see O’Malley v. Grp.*
Health Co-op. of Puget Sound, 109 Wash. App. 1026 (2001) (“An insurer’s fiduciary duty is the
 equivalent of its duty to act in good faith.”); *but see Baker v. Phoenix Ins. Co.*, No. C12-1788JLR, 2014
 WL 241882, at *3 (W.D. Wash. Jan. 22, 2014) (“The court dismisses Mr. Baker’s claim for breach of
 fiduciary duty. Washington courts have yet to recognize a claim for breach of fiduciary duty by an
 insured against an insurer.”). For these reasons, the Court dismisses Austin’s claims of breach of
 fiduciary duty or quasi-fiduciary duty.

1 associated with bad faith[.]” *Id.* The court held that the insured’s damage were limited “to the
 2 amounts it has incurred as a result of the [insurer’s] bad faith investigation, as well as general tort
 3 damages.” *Id.* at 285.

4 The Court disagrees with Metropolitan’s interpretation of *Coventry Associates*, observing
 5 that the Washington Supreme Court recognized that bad-faith claims included general tort
 6 damages. *Coventry Assocs.*, 136 Wash. 2d at 285. An insured’s damages

7 may include as an additional component the damages caused *to him* by the insurer’s
 8 bad faith. Examples include the potential effect on the insured’s credit rating,
 9 damage to reputation, loss of business opportunities, and loss of control of the case.
 Other examples are loss of interest, attorney fees and costs, financial penalties for
 delayed payments, and emotional distress, anxiety, and fear. Because bad faith is
 a tort, an insured is not limited to economic damages.

10 *Miller v. Kenny*, 180 Wash. App. 772, 802, 325 P.3d 278 (2014) (citing *Butler*, 118 Wash. 2d at
 11 399, 392; *Anderson*, 101 Wash. App. 323, 333, 2 P.3d 1029 (2000); *Coventry Assocs.*, 136
 12 Wash. 2d at 284–85); *Beasley v. GEICO Gen. Ins. Co.*, 23 Wash. App. 2d 641, 661, 517 P.3d
 13 500 (2022), *rev. denied*, 200 Wash. 2d 1028, 523 P.3d 1188 (2023) (“Tort claims for the breach
 14 of the duty of good faith, also known as insurance bad faith claims, allow for recovery of
 15 expenses; consequential damages; and ‘general tort damages,’ including noneconomic damages
 16 such as emotional distress caused by the breach of the duty of good faith.”).

17 A negligence claim has four elements: (1) the existence of a duty owed; (2) breach of that
 18 duty; (3) proximate cause between the breach and resulting injury; and (4) legally compensable
 19 damages. *See, e.g., Behla v. R.J. Jung, LLC*, 11 Wash. App. 2d 329, 334, 453 P.3d 729 (2019);
 20 *see also First State Ins. Co. v. Kemper Nat. Ins. Co.*, 94 Wash. App. 602, 612–13, 971 P.2d 953
 21 (1999) (“First State was entitled to instructions on negligence as well as bad faith because they
 22 are two separate and distinct causes of action. . . . Where courts have adopted standards of
 23 good/bad faith and ordinary care, as we have in Washington, the plaintiff is entitled to a jury
 24

1 verdict on theories of either negligence or bad faith, *independent of each other* because a party
2 may fail to use ordinary care yet still not act in bad faith.”). In negligence cases, Washington
3 courts “allow claims for emotional distress in the absence of physical injury only where
4 emotional distress is (1) within the scope of foreseeable harm of the negligent conduct, (2) a
5 reasonable reaction given the circumstances, and (3) manifest by objective symptomatology.”
6 *Bylsma v. Burger King Corp.*, 176 Wash. 2d 555, 560, 293 P.3d 1168 (2013) (citing *Hunsley v.*
7 *Giard*, 87 Wash. 2d 424, 433, 436, 553 P.2d 1096 (1976)).

8 IFCA provides a remedy for insureds when insurers unreasonably deny a coverage claim
9 or benefit payment. *See* RCW 48.30.015(1). If an insurer unreasonably denies a benefit
10 payment or violates any regulation listed in RCW 48.30.015(5), courts may award damages.
11 RCW 48.30.015(2), (5). Noneconomic damages, such as emotional distress damages, are
12 available under IFCA. *See Beasley*, 23 Wash. App. 2d at 666 (“[W]e hold that because the term
13 “actual damages” as used in IFCA is ambiguous and . . . the legislative history of IFCA
14 demonstrates that the act was intended to protect insureds and provide additional remedies,
15 ‘actual damages’ includes noneconomic damages and the trial court erred by refusing to so
16 instruct the jury.”).

17 Here, Austin has shown a genuine fact dispute as to the emotional distress damages
18 caused from Metropolitan’s failure to pay him UIM benefits. In his supplemental declaration,
19 Fite states that the lack of insurance benefits left him in “near destitute circumstances” because
20 his physical injuries and serious brain trauma impeded his ability to work, drive, and enjoy life.
21 Dkt. # 112 at 3. He says that—had Metropolitan satisfied his coverage benefits—he “would
22 have been substantially better, particularly during the acute phase of [his] accident-related
23 recovery.” *Id.* at 4. Without such funds, Austin asserts that he was “essentially destitute,
24 depressed and living a sparse existence.” *Id.* He states that “[h]ad such benefits been available

1 to [him], particularly during [his] acute days of recovery, it would have made a world of
2 difference in my life and would have afforded [him] an opportunity to lead a better life than the
3 fairly squalid one that I had been living[.]” *Id.* Considering the briefing and supplemental
4 declaration, the Court concludes that Austin has established an issue of fact as to his breach of
5 duty of good faith, negligence, and IFCA claims.

6 c. CPA claim

7 The CPA makes “[u]nfair methods of competition and unfair or deceptive acts or
8 practices in the conduct of any trade or commerce” unlawful. RCW 19.86.020. To prevail on a
9 CPA claim, “a plaintiff must establish five distinct elements: (1) unfair or deceptive act or
10 practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in
11 his or her business or property; (5) causation.” *Hangman Ridge Training Stables, Inc. v. Safeco*
12 *Title Ins. Co.*, 105 Wash. 2d 778, 780, 719 P.2d 531 (1986). A CPA claim, for example, can be
13 based on a violation of WAC 284–30–330, which defines unfair claims settlement practices. *See*
14 *Kallevig*, 114 Wash. 2d 907, 923, 792 P.2d 520 (“A violation of WAC 284–30–330 constitutes a
15 violation of RCW 48.30.010(1), which in turn constitutes a per se unfair trade practice by virtue
16 of the legislative declaration in RCW 19.86.170.”); *Perez-Crisantos v. State Farm Fire & Cas.*
17 *Co.*, 187 Wash. 2d 669, 685, 389 P.3d 476 (2017).

18 The CPA allows a plaintiff to “recover the actual damages sustained by him or her, or
19 both, together with the costs of the suit, including a reasonable attorney’s fee.” RCW 19.86.090;
20 *Peoples v. United Servs. Auto. Ass’n*, 194 Wash. 2d 771, 781, 452 P.3d 1218 (2019) (actual
21 damages under the CPA may be out-of-pocket medical expenses that should have been covered).
22 Yet “[c]ompensable injuries under the CPA are limited to ‘injury to [the] plaintiff in his or her
23 business or property.’” *Frias*, 181 Wash. 2d at 430.

1 The CPA's requirement that injury be to business or property excludes personal
 2 injury, "mental distress, embarrassment, and inconvenience." *Panag v. Farmers*
 3 *Ins. Co. of Wash.*, 166 Wash. 2d 27, 57, 204 P.3d 885 (2009). The financial
 4 consequences of such personal injuries are also excluded. *Ambach v. French*, 167
 5 Wash. 2d 167, 178, 216 P.3d 405 (2009). Otherwise, however, the business and
 6 property injuries compensable under the CPA are relatively expansive.

7 *Frias v. Asset Foreclosure Servs., Inc.*, 181 Wash. 2d 412, 431, 334 P.3d 529 (2014); *see also*
 8 *Kovarik v. State Farm Mut. Auto. Ins. Co.*, No. C15-1058-TSZ, 2016 WL 4555465, at *3 (W.D.
 9 Wash. Aug. 31, 2016) ("A plaintiff 'cannot prove an injury to her business or property by solely
 10 alleging that Allstate should have paid her medical bills, because those injuries are derivative of
 11 her personal injuries. Personal injuries are not compensable damages under the CPA and do not
 12 constitute an injury to business or property.'").

13 Austin's declaration does not state that he suffered any additional economic damages
 14 caused by Metropolitan's delay in payment. Although Austin says that he has suffered
 15 significant mental distress because of Metropolitan's failure to promptly pay benefits, this is not
 16 a cognizable injury under the CPA.

17 IV

18 CONCLUSION

19 Based on the above, the Court ORDERS the following:

- 20 1. The Court GRANTS in part and DENIES in part the motion. *See* Dkt. # 110.
- 21 2. The Court DECLARES that, because Austin has been compensated in full for his
 22 injuries, Metropolitan does not owe Austin any UIM benefits. The claim for UIM
 23 benefits is DISMISSED with prejudice.
- 24 3. As for Austin's claims for breach of good-faith duty, negligence, and IFCA
 violation, the Court DENIES Metropolitan's motion.

4. As for Austin's claims of breach of fiduciary or quasi-fiduciary duty and CPA violation, the Court GRANTS Metropolitan's motion. These claims are DISMISSED with prejudice.

5. As for Austin's breach of contract claim, the Court DENIES Metropolitan's motion to dismiss. The Court notes that this claim may suffer from a lack of compensable damages, but Metropolitan did not move to dismiss on this ground.

6. The Court DECLARES that if Austin proves entitlement to PIP coverage and payment of those benefits, he is limited to attorney fees and litigation costs available under Washington law.⁹

7. The Court DECLARES that Consolidated Defendant Metropolitan Property and Casualty Insurance Company (Metropolitan P&C) has no UIM or PIP obligations to Austin under its excess (umbrella) policy. The claims against Metropolitan P&C are DISMISSED with prejudice.

8. As for Metropolitan's motion to strike the Williams Declaration, *see* Dkt. # 113, the Court DENIES the motion without prejudice.

Dated this 27th day of June, 2024.



John H. Chun
United States District Judge

⁹ Metropolitan seeks to limit "any recovery Austin could have against [it] under the PIP coverage[.]" and asks the Court to declare "that the most Austin can recover on account of the PIP claim . . . is an award of fees and costs pursuant to Washington law." Dkt. # 110 at 18. Austin does not really substantively respond to this claim, nor does he show that he suffered any harm from not having access to his PIP benefits. Dkt. # 112 (alleging emotional distress because of Metropolitan's refusal to provide him with UIM benefits). For these reasons, and those stated in Metropolitan's briefing, *see* Dkt. # 114 at 16, the Court agrees that Austin's recovery under his PIP coverage should be limited to an award of attorney fees and costs under Washington law.